

**MINUTES OF MEETING OF THE CORPORATIONS COMMITTEE
July 8, 2005**

A regular meeting of the Corporations Committee (the "Committee") of the Business Law Section of the State Bar of California was held at the San Francisco offices of Pillsbury Winthrop Shaw Pittman on July 8, 2005. Attendance was as follows:

MEMBERS PRESENT:

James F. Fotenos
Matthew R. Gemello
Steven K. Hazen
Mark T. Hiraide
Nina L. Hong
Victor Hsu
Brian A. Lebrecht
Brian D. McAllister
William R. Sawyers
Jennifer Lynn Sostrin*
Steven B. Stokdyk
Suzanne L. Weakley
Bertha Cortes Willner
Brian M. Wong

MEMBERS ABSENT:

Curt C. Barwick
Christopher A. Delfino
Bruce R. Deming
Steve Harmon
Stewart Laughlin McDowell
Deborah J. Ruosch
David Serepca
Teri Shugart
Lemoine Skinner III

LIAISONS AND GUESTS PRESENT:

Tim LeBas, Department of Corporations*
Colleen Monahan, Department of Corporations*
Rosalind R. Tyson, Securities and Exchange Commission*
Larry Doyle, State Bar of California, Office of Government Affairs*
Jon Webber, NASD*

*Via Telephone

The minutes summarize discussion primarily in the order items were listed on the Agenda for the meeting previously circulated to members of the Committee, which is not necessarily the order in which the items were actually taken up at the meeting. The Committee did not take up those topics listed on the Agenda that are not described in these minutes.

I. ADMINISTRATIVE MATTERS

1. Opening Remarks: The meeting was called to order by Co-Chairs Fotenos and McAllister at 9:30 a.m. Mr. Fotenos thanks the members of the Committee in attendance and informed them that a quorum was present.
2. Minutes of June Meeting: In the absence of Mssrs. Serepca and Delfino, Mr. Fotenos instructed members to give their comments with respect to the minutes for the meeting on June 3, 2005 directly to Mssrs. Serepca and Delfino. Action to approve the minutes for the meeting on June 3, 2005 was deferred to the August meeting.

II. AGENCY AND LIAISONS' REPORTS

1. Securities and Exchange Commission: Ms. Tyson reported that the SEC has a new address, 100 F Street NE, Washington, D.C, 20549, as well as all new telephone numbers. Ms. Tyson also reported that when Congress returns from recess, three SEC commissioners will be up for approval: Annette Nazareth, Roel C. Campos and Christopher Cox. Finally, Ms. Tyson reported that on June 29, 2005, the SEC voted to adopt changes to rules regarding various processes regulated under the provisions of the Securities Act of 1933. A good summary of the reforms can be found on the SEC's website under "News & Public Statements - News Digest".
2. NASD: Mr. Webber reported that there is an attorney opening at the NASD. Last week the NASD announced fines and censures of 20 firms, with the largest fine being \$280,000. Of such 20 firms, 18 had fines in excess of \$25,000. Mr. Webber advised the Committee of Notice to Members 0506, which announced that the SEC approved amendments to the taping rule. The amendments require members to submit requests within 30 days of receiving notice from the NASD that they are subject to the taping rule. The NASD also plans to implement heightened supervision of taping. Mr. Webber also reported on Notice to Members 0547, which addresses unexpected closings of the securities markets.
3. Department of Corporations: Mr. LeBas reported that Henry Liu in Securities Regulation has a position opening in the Los Angeles office and Northern California as well. The DOC today posted on its website the new 25102(f) notice with instructions. Effective July 22, 2005, all 25102(f) notices must be filed electronically. Mr. LeBas asked that the Committee make the new form available to the Committee's webmaster. The electronic filing requirement is subject to a hardship exception pursuant to which a paper filing may be made. Mr. LeBas indicated that at this time, the DOC is not going to question a filer's use of the hardship exception; so long as the notice is properly completed, the DOC will not

reject a paper filing. The electronic filing requirement does not apply to Form D notices, although the DOC is looking into accommodating them electronically in the future. Mr. LeBas reported that the window is closed on the Corporate Disclosure Act and that it will have to be taken up next year. Mr. LeBas updated the Committee on the DOC's Uniform Securities Act project. The DOC is still reviewing the USA internally and going through many drafts of a proposed California Uniform Securities Act. The DOC's next step will be to circulate a draft California USA internally for approval. Mr. LeBas indicated that perhaps by late Fall or Winter, if approved internally, the draft California USA will be distributed it to interested parties for comment.

4. Office of Governmental Affairs: Mr. Doyle confirmed that there was relatively little legislative activity relating to corporations. Mr. Doyle then reported on the status of several bills, including SB 119 (relating to board consents) and SB 627 (to remove usury exemption for transactions involving real property).
5. Corporate Law Departments: Mr. Sawyers reported that the Corporate Law Departments Committee is still not active.
6. Financial Institutions: Ms. Sostrin reported on the Financial Institutions Committee (the "FS Committee") meeting held on June 14, 2005. She indicated that at the upcoming State Bar Annual Meeting, representatives of the FS Committee will be making a presentation entitled "Hot Topics in Financial Institution Litigation." Ms. Sostrin discussed the report made by a member of the FS Committee concerning data security for financial institutions, and reported on the final guidance issued by the Federal Reserve and three other government banking agencies during March 2005 regarding rules governing how banks must treat personal information theft. She discussed the FS Committee's report on H.R. 1077 (Realtime Investor Protect Act), a bill designed to improve the access of investors to regulatory records with respect to securities brokers, dealers and investment advisors, by way of example. Finally, Ms. Sostrin discussed the FS Committee's report concerning the recently filed suit by the OCC against Attorney General Elliot Spitzer, which suit alleges that Mr. Spitzer is interfering with the OCC's fair lending examination and supervision process.
7. UCC: Ms. Hong reported that there is nothing new to report regarding the UCC Committee. The Opinions Report is out as an exposure draft.

III. SUBCOMMITTEE REPORTS

1. Legislation: Mr. Stokdyk reported on the status of AB 241 (mergers; certificate of satisfaction) and AB 1513 (spot bill for DoC). Mr. McAllister reported on the status of SB 119 (unanimous written consent; interested directors).
2. Communication and Website Development: Mr. Hsu reported that the Communications and Website Development subcommittee is in the process of adding a discussion regarding § 25102(f) to the practitioner's corner of the Committee's website. Mr. Hsu would like to form a subcommittee to think about how to develop this page and requested insight from members of the Committee at smaller or boutique firms. Mr. Serepca and Mr. Deming were volunteered for this subcommittee. Mr. Lebrecht volunteered for this subcommittee.
3. Education/Publications: Ms. Weakley reported that Ms. Shugart is coordinating the programs for the State Bar meeting in October. Mr. Lebrecht is putting together an article for electronic communications. Mr. Bishop volunteered to write an article on that topic for California Business Law Practitioner.

IV. 2004-2005 AGENDA: STATUS

1. Opinions Report: Mr. Fotenos reported that the Opinions Report was posted to the members-only section of the Business Law Section's website. You may access the member's-only section of the website with your bar number and the reference number on your most recent bar dues statement. The Opinions Report will be published in print form by mid-August and be available to members for \$25 and non-members for \$95.
2. Handbook for Incorporating a Business in California: Mr. Fotenos reported that the Handbook for Incorporating a Business in California is now before the Office of the General Counsel of the State Bar. Mr. Fotenos distributed copies of a form of Copyright License Grant for signature by members of the Committee.
3. Uniform Securities Act Report: Mr. Hiraide reported that the Uniform Securities Act subcommittee hopes to distribute a draft of its analysis of the Uniform Securities Act prior to the August meeting. The subcommittee is lacking a volunteer for the broker-dealer section, so Mr. Hiraide will contact Colleen Monahan to see if she can identify the major issues.

4. Close Corporation Model Act Adoption: Ms. Weakley reported that Mr. Serepca will be consolidating the separate work product of each member of the Close Corporation Model Act subcommittee. Once consolidated, it will be circulated among the members of the subcommittee, who will meet after the August meeting. Once the members of the subcommittee have completed their work, the work product will circulate it to the Committee at large.
5. BLN Article Regarding Fairness Hearings: It was determined that Mr. Wood will be asked to circulate a draft of his BLN article regarding fairness hearings to the Committee.
6. National Venture Capital Association Model Forms Project: Mr. Fotenos reported that the Committee will devote a good portion of the August meeting to reviewing the forms prepared in connection with this project.

V. OTHER BUSINESS

1. ABA Resolutions: Mr. Hazen reported that the ABA Resolutions Task Force will be a two year committee. The goal of the Task Force is to have on record standard principles and to point out where current practices are impinging upon the attorney-client privilege. The resolutions will be presented to the House of Delegates in Chicago in August 2005. If the resolutions are adopted, the project will go into phase two, which will involve going back to each group which has expressed opposition to the resolutions, such as the Department of Justice, SEC, IRS, PCAOB, AIPCA and FASB. The Committee has been asked to be involved in phase two of the project. The Committee recognized the efforts of Mr. Hazen and Keith Bishop in this project.
2. Vantage Point vs. Examen Casenote: Mr. McAllister reported on the progress of the casenote regarding the Vantage Point case, which is being drafted by Mssrs. McAllister, Skinner and Deming.
3. ABA Majority Voting Report: Mr. Fotenos reported on the ABA Majority Voting Report, which contemplates whether the rule for the election of directors (plurality rule) should be changed. The Committee considered whether the Committee should provide comments to this report. Alternatives being considered include: retaining the current plurality rule; changing the current rule to majority vote; adopting a default plurality rule, but applying a minimum approval requirement, such as 1/3; and leaving the default rule, but specifically authorizing “against” votes. The stated deadline for comments is August 15, 2005. The next meetings to discuss this are in September and December. Mssrs. Fotenos, McAllister and Gemello volunteered to draft a position paper.

4. Dean Foods: Mr. Fotenos reported on the opinion in Dean Foods.
5. Looking Forward: Mr. McAllister recommended that the officers of the Committee for the 2005-2006 year develop a list of topics to be taken up in 2005-2006. Recommendations should be sent to Mssrs. Gemello and Stokdyk.

The meeting was adjourned at approximately 12:01 p.m.

/s/ Bertha Cortes Willner
Bertha Cortes Willner, Secretary-elect